to him as collateral security a mortgage on real property. The plaintiff foreclosed under a power of sale in the mortgage, and bought in the title. *Held*, that the plaintiff holds the title as trustee for the defendant, and subject to redemption on the defendant's payment of his debt. *Union Trust Co.* v. *Hasseltine*, 39 Banker and Tradesman 197 (Mass., Sup. Jud. Ct., Jan. 5, 1909).

It is the almost universal rule that a pledgee is precluded from buying at a sale of the property pledged. *Lord* v. *Hartford*, 175 Mass. 320. But he may take any proper action for its preservation. Accordingly, when the thing pledged is a mortgage he may foreclose the mortgage for breach of condition, and such foreclosure is valid against the mortgagee. *Smith* v. *Bunting*, 86 Pa. St. 116. And if the mortgagee, who is also the pledgor, is joined in the foreclosure sale, his right to redeem from the pledgee will likewise be extinguished. *Bloomer* v. *Sturges*, 58 N. Y. 168. On the same principle the pledgee may, with the pledgor's express authority, buy in the property at the mortgage sale with the result that the mortgagee's claim is transferred to the proceeds. *Jennings* v. *Wyzanski*, 188 Mass. 285. But with these qualifications the weight of authority supports the principal case, holding that the only effect of the sale is the substitution of the land for the mortgage in the hands of the assignee, who takes the legal title subject to a trust in favor of the pledgor. *Re Gilbert*, 104 N. Y. 200; *Montague* v. *Boston & Albany R. Co.*, 124 Mass. 242. *Contra*, *Anderson* v. *Messinger*, 146 Fed. 929.

POLICE POWER — NATURE AND EXTENT — COMPENSATION FOR DESTRUCTION OF PRIVATE PROPERTY. — During the war with Spain the commanding general of the United States army caused to be destroyed certain buildings in Cuba belonging to the plaintiff, a Pennsylvania corporation, in order to prevent the spread of yellow fever among the United States troops. The plaintiff brought suit in the Court of Claims for compensation. *Held*, that the plaintiff is not entitled to recover. *Juragua Iron Co.* v. *United States*, 212 U. S. 297.

If in time of peace private property is taken for public purposes without formal proceedings of condemnation, the owner may sue in the Court of Claims for compensation. *United States* v. *Great Falls Mfg. Co.*, 112 U. S. 645. The action is quasi-contractual in its nature, and the Court of Claims has jurisdiction over actions of quasi-contract. *Ingram* v. *United States*, 32 Ct. Cl. 147. But when such property is found in enemy territory it may be seized and confiscated without compensation, even though it belongs to a loyal citizen of the confiscating government. *The Venus*, 8 Cranch (U. S.) 253. The principal case may also be justified on the ground that the property was not *taken* for public use, but was *destroyed*, because detrimental to the public welfare. If private property is taken for public use, it is by an exercise of the power of eminent domain, and just compensation must be given according to the Fifth Amendment. But if private property is destroyed in the due exercise of the police power, no right to compensation arises. *Bowditch* v. *Boston*, 101 U. S. 16. See 3 HARV. L. REV. 189.

PUBLIC OFFICERS — DE FACTO OFFICERS — VALIDITY OF CONTRACTS. — A, while ineligible through the holding of another office, was regularly appointed and publicly recognized as school trustee. He and another trustee who together constituted a majority of the board voted in the regular way to accept a contract of employment with B as a teacher. The succeeding board composed of legally qualified and appointed members employed C for the same position. *Held*, that B is entitled to the position. *Johnson* v. *Sanders*, 115 S. W. 772 (Ky.).

An officer *de facto* is one who has the reputation of being the officer he assumes to be and yet is not an officer in point of law. *King* v. *Corporation of Bedford Level*, 6 East 356; *State* v. *Carroll*, 38 Conn. 449. Such officer must hold under color of right, either through election or appointment, or through long-continued acquiescence by the public in his exercise of the office. *State* v. *Carroll*, *supra*. Thus one ineligible on account of occupancy of an incompatible office has been held a *de facto* officer. *McGregor* v. *Balch*, 14 Vt. 428.

The authorities are divided as to whether there can be a *de facto* officer when there is no *de jure* office. *Norton* v. *Shelby County*, 118 U. S. 425. *Contra*, *Lang* v. *Bayonne*, 74 N. J. L. 455. Necessity demands that the public be protected in its dealings with public officers. See *Plymouth* v. *Painter*, 17 Conn. 585. Hence it is settled that the acts of a *de facto* officer within the scope of his apparent authority are valid so far as the rights of the public and interested third persons are concerned. *Wilcox* v. *Smith*, 5 Wend. (N. Y.) 231. These acts cannot be attacked collaterally. *Plymouth* v. *Painter*, *supra*. Thus contracts made by officers *de facto* are binding. *School Town of Milford* v. *Zeigler*, 1 Ind. App. 138. But there would be no reason for the application of this rule if the defect in title were notorious. *Conway* v. *City of St. Louis*, 9 Mo. App. 488.

QUIETING TITLE — CANCELLATION OF UNENFORCIBLE COVENANT. — By mesne conveyances the plaintiff acquired from the defendant a lot of land, the deed of which contained a covenant not to use the land for any but church purposes. The land had not been sold for a smaller price by reason of the covenant, and the covenant was of no value to the defendant, who was simply using it as a means of extortion. The plaintiff, claiming that the covenant was invalid and prevented a favorable mortgage of the property, filed a bill praying that the defendant be ordered to release it. *Held*, that the covenant is unenforcible and that the defendant be ordered to release it. *Rector, etc., of St. Stephens Church* v. *Rector, etc., of the Church of the Transfiguration*, 40 N. Y. L. J. 1940 (N. Y., App. Div., Jan. 1909).

The case is a novel one and the decision sane. It is especially noteworthy because of the long-continued tendency of the New York courts to limit within narrow bounds the jurisdiction of equity in this class of cases. Thus its courts will not entertain bills for the cancellation or restoration of paid notes, or of instruments obtained by fraud. *Fowler* v. *Palmer*, 62 N. Y. 533; *Globe Co.* v. *Reals*, 79 N. Y. 202. And it has long been the established New York rule that in a bill to remove a cloud on title the plaintiff must fail if the claim of the defendant is invalid on its face, or if its invalidity must inevitably be disclosed in its enforcement. *Scott* v. *Onderdonk*, 14 N. Y. 9. See 18 HARV. L. REV. 527; 2 AMES, CAS. EQ. JUR., 148, 150. This narrow and pedantic rule the court in the present case refuses to recognize on the authority of very early cases of the cancellation of instruments, although it grants that the covenant was invalid on its face, or would necessarily appear so in any attempt to enforce it. The result is refreshing, and it is to be hoped that it marks a tendency of the New York equity courts to get away from unnecessary technicalities and broaden their jurisdiction.

RULE AGAINST PERPETUITIES — REMOTENESS OF VESTING AS THE TEST IN NEW YORK. — A testator bequeathed personal property to his executors in trust to pay the income to W. for life, with the further direction: "and at her decease I give to her issue, share and share alike, such income, and as each of her said issue shall attain the age of 21 years, I give to it one equal undivided share of the principal"; and in case W. should die, leaving no issue which should attain 21 years, then the fund was to go to S. and M., persons then living. *Held*, that the gift to S. and M. is void for remoteness under the New York Revised Statutes. *Matter of Wilcox*, 194 N. Y. 288. See NOTES, p. 520.

VENDOR AND PURCHASER — RIGHTS AND LIABILITIES — CONDITIONS PRECEDENT TO FORFEITURE OF PAYMENTS ON DEFAULT. — The defendant agreed to convey certain land to the plaintiff as soon as he got title. Payment was to be by installments, all payments to be forfeited on a default. There was default in the last installments; but the defendant did not declare a forfeiture until after he had acquired title, nor did he ever tender a deed. The plaintiff sought specific performance. *Held*, that the plaintiff is entitled to